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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

**Re: Annual Report and Analysis of Competitive Market Conditions With Respect
Mobile Wireless Including Commercial Mobile Wireless Services, WT Docket 09-66**

Dear Ms. Dortch:

On May 5, 2010, Jeanine Poltronieri and Joan Marsh, representing AT&T, met with John Giusti, Chief of Staff and Legal Advisor to Commissioner Michael J. Copps, to discuss the upcoming Wireless Competition Report.

The AT&T representatives discussed their views, consistent with the AT&T comments filed in this proceeding, that the four-part framework established by the Commission, examining market structure, carrier behavior, consumer behavior and market performance should be maintained as it correctly focuses on whether rivalry between firms is creating positive, observable benefits for consumers. The record evidence in this proceeding, including economic evidence, unequivocally points to the conclusion that the wireless marketplace is at least effectively competitive. To find otherwise, or to make no finding at all, ignores this overwhelming evidence.

Some of the most salient points provided in the record include the following data:

Market Structure Metrics – Number and Type of Competitors and Concentration:

- US has four national carriers, three large regional providers, dozens of smaller providers and more than 40 MVNOs.
- Most US consumers can chose among at least five different providers.
- Compared to the 26 industrialized countries tracked by OECD, the US market is the *least* concentrated.
- Any potential harms from consolidation are eliminated by Commission safeguards, including divestiture orders.

Provider Conduct Metrics – Price and Non Price Rivalry:

- National, regional and local carriers have continued to compete on price as evidenced by lower prices.
- Per minute US prices continue to be well below those of most other industrialized nations.
- Wireless companies spend more on advertising than any other companies in any other industry.
- Continued investment in down economy, including upgrades for broadband deployment.
- Differentiation by service offerings, including for next generation networks, and coverage.
- Carrier competition for innovative handsets and handset pricing.

Customer Conduct Metrics – e.g., Customer Ability and Propensity to Switch Service Providers:

- Based on churn rate, between 15% and 40% of customers switch carriers or cancel each year.
- Switching costs are low for customers who have satisfied their contracts – LNP and subsidized handsets available at low cost.
- Growth of prepaid customers.

Market Performance Metrics – e.g., Price, Output, Quality, Investment, Innovation:

- Output increasing (subscribers, minutes of use, monthly text volumes, broadband usage, multimedia messaging, number of services and features).
- Quality is increasing – wireless complaints at lowest level (non-TCPA).
- Investment totaling at least \$20B in 2008 for the four national carriers alone.
- Innovation –in pricing plans, devices, applications.

In addition, the parties discussed spectrum analysis in the Report, and the proposed review of spectrum below and above 1GHz. AT&T expressed its view that spectrum usable for commercial mobile applications should be analyzed as a whole. Indeed, this was the approach most recently taken by the Commission in the Broadband Report, which recognized the utility of spectrum up to 3.75 GHz for mobile broadband uses. (See Recommendation 5.8: 300 MHz of spectrum between 225 MHz and 3.7 GHz should be made available for *mobile flexible use* within five years, Federal Communications Commission, Connecting America: The National Broadband Plan (March 16, 2010 at 84)(emphasis added). Indeed, specific recommendations in the Broadband Report include WCS, AWS -2 and AWS-3, and Broadband Capable MSS bands, all of which are above 1 GHz.

AT&T also pointed out that as carriers face increased capacity constraints, the benefits of lower band spectrum are made moot. While the cellular and 700 MHz bands may have beneficial propagation characteristics, it is not clear that these bands have advantages over other commercial mobile spectrum in all circumstances. As far as capacity is concerned, all the bands are equal. Spectral efficiency, as measured by bits/Hz/second, is the same for all spectrum bands for the same technology. For example, in AT&T's capacity modeling for LTE we assume 1.2 bits/Hertz/second for all the bands allocated for commercial mobile operations. In any capacity constrained situation,

operators must add new and overlay cell sites to provide for an increase in capacity. In AT&T UMTS network, for example, AT&T added approximately the same number of new or overlay sites in 2009 for cellular and PCS spectrum.

2009 Snapshot For New and Overlay UMTS Sites	
Cellular band sites	14,115
PCS band sites	14,647

The AT&T representatives also pointed out that in certain situations, a higher frequency band can achieve greater improvements in capacity. For example, spectrum bands in the lower frequency range makes MIMO (multiple input/multiple output) and smart antenna implementation more challenging in handset design due to constraints in antenna size (lower spectrum requires larger antennas). Furthermore, the use of higher frequencies also makes possible significant efficiencies with respect to duplexing equipment. A single duplexer can span a larger block of spectrum at 2.5 GHz, for example, than it could at 700 MHz.¹ Broadband technologies, such as LTE and WiMAX, can exploit 20 MHz or more of contiguous spectrum in a single channel to deliver their highest spectral efficiency and highest throughputs. Higher frequency bands, such as the 2.5 GHz band, makes such allocation possible enabling the operators to operate high-speed LTE/WiMAX services at optimum performance.

Finally, the AT&T representatives pointed out that any analysis that draws a line of demarcation at 1GHz ignores the marketplace reality. Carriers are using spectrum above 1 GHz to compete aggressively, including for broadband uses. For example:

- T-Mobile, which only holds licenses for spectrum above 1GHz, claims that its “national 3G network reaches over 205 million people at the end of the fourth quarter of 2009, nearly doubling the 3G footprint during the year.” (T-Mobile USA Reports Fourth Quarter and Full Year 2009 Results). T-Mobile also claims that its “HSPA+ yields most capable 3G+National Network 2010-2011.” (T-Mobile USA: Regaining U.S. Market Position, March 18, 2010).
- Clearwire, which only holds licenses for 2.5GHz spectrum, touts “Clearwire’s Spectrum Advantage – Average nationwide spectrum position of greater than 120 MHz,” with “2.5GHz Spectrum Advantages” including “depth to deliver broadband content and services” as compared with “PCS, Cellular, AWS, ESMR and 700 MHz.” (John Butler, Chief Financial Officer, Clearwire Corporation, Presentation to Jefferies Communications Conference, September 9, 2008).

¹ For example, 3GPP band 12 defined in the lower 700 MHz block, 698 -716 MHz paired with 728 – 746 MHz, can encompass only 18 MHz of contiguous spectrum. However, 3GPP band 7 defined in 2.5 GHz band, 2500 – 2570 MHz paired with 2670 -2689 MHz, can encompass 70 MHz of contiguous spectrum.

- SkyTerra, with licenses to MSS spectrum, states that it will utilize “approximately 30 MHz of L-Band spectrum that is conducive for mobile and fixed broadband wireless services and authorized for use in every market in North America, covering a total population of nearly 330 million people.” (Skyterra Communications website, May 4, 2010).

Consumers have never made any distinction between services provided by cellular and PCS bands and it is unlikely that they will do so as services are deployed in higher bands. An analysis that focuses on spectrum below 1GHz as uniquely ideal for mobile uses is an inappropriate basis for policy decisions.

Pursuant to Section 1.1206 of the Commission’s rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket.

Sincerely,

/s/Jeanine Poltronieri